
(1988) 10 KL CK 0013
In the High Court Of Kerala
Case No : M.F.A. No. 572/88

Ahamed and Others

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 18-10-1988

Acts Referred:

Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 8

Citation : (1988) 2 KLJ 756

Hon'ble Judges : V. Sivaraman Nair, J;M. Fathima Beevi, J

Bench : Division Bench

Advocate : P.K. Moosa, for the Appellant; M.C. John, Government Pleader, for the Respondent

Judgement

Fathima Beevi, J.—These appeals filed under S. 8A of the Kerala Private Forest (Vesting and Assignment) Act 1971 arise from the common order of the Forest Tribunal, Manjeri dated 30-7-1983 disposing of six connected applications under S. 8 of the Act. These Original Applications were O.A. Nos.66 of 1981, 67 of 1981, 68 of 1981, 70 of 1981, 97 of 1981 and 101 of 1981. The Tribunal dismissed O.A. Nos. 68, 97 and 101 of 1981. The aggrieved persons have filed M.F.A. Nos. 572, 496 and 568 of 1983 against the order of dismissal. O.A. Nos. 66, 67 and 70 of 1981 were allowed. The State has therefore filed M.F.A. Nos. 650, 651 and 655 of 1983 challenging the order in these petitions. These appeals have been heard together and are being disposed of by the common judgment. The Original Applications had been filed before the Forest Tribunal under S. 8 of the Act claiming exemption from vesting in respect of certain, area of land in "Mazha Kodi Tharisu". The extents stated in O A Nos 66, 67, 68, 70, 97 and 101 are respectively 11.40 acres, 8.35 acres, 4.90 acres, 4.65 acres, 6.35 acres and 6.70 acres.

2. We shall first consider the appeals filed by the State as M.F.A. Nos, 650, 651 and 655 of 1983 arising from O.A. Nos. 67, 70 and 66 of 1981 respectively The petitioners claimed that the land had been taken on lease from Nilambur

Kovilakom in 1946. The petitioners and their predecessors have cultivated the land with paddy and other crops and are in enjoyment of the same and no portion of the respective area is forest and could not therefore vest under the Act. The petitioners also claimed that they have obtained purchase certificates in respect of areas on application made before the Land Tribunal with the Forest authorities on the party array. The custodian of private forest - the respondent - contested the claim on the ground that the disputed items are portions of a compact area of 10002.12 hectares of private forest in Sy. No. 1305 of Chungathara village governed by the M P. P F. Act, the area does not contain any cultivation, there are forest trees of spontaneous growth of more than 40 years old and that the petitioners are therefore not entitled to the exemption claimed. The decision of the Land Tribunal was also attacked as invalid while denying the oral entrustment,

3. The petitioners in the three cases were examined as PW1, PW3 and PW2 respectively. PW6 is the Bank Officer who had inspected the land in connection with the application for loan. PW7 is the Revenue Inspector who has filed Exts. A1, A10 and A6 reports before the Land Tribunal after the inspection. Besides examining themselves, the petitioners have produced Exts. A4, and A8 revenue receipts. RW1 to 3 had been examined for the respondents and Exts. B1 to B3 were proved.

The Forest Tribunal without considering the claim of tenancy and cultivation prior to 10-5-1971 on the basis of the evidence tendered before it, relied on, Exts A7, A18 and A3, the orders of the Land Tribunal, to conclude that the petitioners had been cultivating the areas as tenants on 10-5-1971. On the basis of that finding the Forest Tribunal held the view that the petitioners are entitled to the protection of Section 3(2) of the Act, In Exts. A3, A18 and A7 the Forest Tribunal has found that the petitioners had been cultivating the land even before 1-4-1964 and they are therefore, entitled to purchase certificate. When the order, of the Land Tribunal in the first instance was assailed in appeal, the appellate authority made a reservation that the decision of the Land Tribunal shall be subject to the decision of the Forest Tribunal on the question whether the land in dispute is private forest. In the light of that reservation and in view of the provisions of the Vesting Act the decisions rendered by the Land Tribunals in these cases are not conclusive for the purpose of deciding whether the applicants are entitled to the benefit of Section 3(2) or 3(3).of Act 26 of 1971.

4. Kerala Private Forest (Vesting and Assignment) Act 1971 is an act provided for vesting in Government of Private Forest in the State and for the assignment thereafter to agriculturists and Agricultural labourers for cultivation. The preamble to the Act states that the Government consider that such agricultural land should be so utilised to increase the agricultural production in the State and to permit the Welfare of the agricultural population and to give effect to the above object it is necessary that the private forest should vest in the Government. Private forest, as defined in Section 2 (f) of the Act means (1) in

relation to the Malabar District any land to which the M.P.P.F. Act applied immediately before the appointed day excluding the categories specified under clauses A, B, C and D. Thus lands which are gardens or nilams as defined in the Kerala Land Reforms Act, lands which are used principally for the cultivation of plantation crops, lands principally cultivated with cashew and other fruit bearing trees or with any other agricultural crop and sites of buildings and lands appurtenant to and necessary for the convenient enjoyment and use of such buildings have been taken out of the purview of the Act.

5. Thus, in relation to the Malabar area, land to which the M.P.P.F. Act applied would be private forest for the purpose of the Act unless it is proved to be land falling under Clauses A, B, C and D. Such private forest would vest in the Government free from all encumbrances u/s 3(1) of the Act. The exemption provided under Sub-Section (2) of Section 3 is in respect of so much extent of land comprised in private forests held by an owner under his personal cultivation, as is within the ceiling limit applicable to him under the Kerala Land Reforms Act or any building or structure standing thereon or appurtenant thereto. If the applicant establishes that the land though falling under the M.P.P.F. Act, comes within any one of the Clauses A, B, C or D, it ceased to be private forest for the purpose of the Act and would not vest in the Government u/s 3 (1). Even if the applicant does not succeed in proving that fact and the land is found to be private forest he would be still entitled to claim exemption from vesting if it is proved that he is the owner thereof and the land had been under his personal cultivation as on 10-5-1971 and the extent of the land is within the ceiling limit applicable to him.

6. In view of these provisions dispute may arise as to whether any land is a private forest or not or any private forest or portion thereof has vested in the Government or not. When such disputes arise the person who claims that the land is not a private forest or that the private forest is not vested in the Government, may apply to the Forest Tribunal for the decision of the dispute u/s 8 of the Act. Section 13 of the Act invests the Forest Tribunal with exclusive jurisdiction to decide such questions. No civil court shall have jurisdiction to decide or deal with any question or to determine any matter which is by or under the Act required to be decided or dealt with or to be determined by the Tribunal or the custodian or any other officer. When such exclusive jurisdiction is vested with the Forest Tribunal to decide whether the land in dispute is a private forest or not, that is to say whether the land to which the provisions of the M.P.P.F. Act applied would fall under any one of the categories specified in Clauses A,B,C, or D, such questions are to be dealt with and decided by the Forest Tribunal only. Similarly the question whether the land which is private forest and which does not fall under any of the aforesaid categories had vested in the Government or not is again a matter within the exclusive jurisdiction of the Forest Tribunal. If it is claimed that the disputed land which is a portion of a forest governed by the M.P.P.F. Act is owned by the applicant and is held under his personal cultivation and he is entitled to the benefit of the exemption under sub-section 2 of Section

3, the claim can be decided only by the Forest Tribunal. For the purpose of deciding that question the Forest Tribunal has to consider whether the petitioner is the owner of the land. The Forest Tribunal has also to consider whether the land is under his personal cultivation and whether he holds land within ceiling limits. The term "owner" is defined in the Act includes in relation to a private forest a mortgagee, lessee or other person, having right to possession and enjoyment of the private forest. In a case where the petitioner claims that he is the lessee of the land or the person having right to possession and enjoyment of the private forest that question has necessarily to be decided, when that is disputed. The Forest Tribunal has to decide whether the petitioner is a lessee as alleged and whether he is a person having right to possession and enjoyment of the private forest. It may be that the question of tenancy arising for determination in the proceedings before the Land Tribunal had been decided by that authority. The Land Tribunal has also the exclusive jurisdiction to decide the question of tenancy when it is raised. What the Land Tribunal decides is whether the petitioner is a tenant a, defined in the Land Reforms Act by adjudicating upon his rights over the land as on 1-4-1964 or as on 1-1-1970. The question which the Forest Tribunal has to decide is whether the applicant is a lessee or person having right to possession and enjoyment of the forest land as on 10-5-1971, the appointed day. If the question of tenancy is determined by the Land Tribunal in a proceeding instituted before it under the provisions of the Kerala Land Reforms Act with the necessary parties on record the decision arrived at in such proceedings would be conclusive for the purpose of that Act. Chapter II - provisions regarding tenancies-of Kerala Land Reforms Act, as amended does not apply to leases in respect of private forest except in the case of persons who were entitled to fixity of tenure immediately before the 21st January, 1961 under any law then in force or persons claiming under such persons, in view of S. 3(1) (vii) of the Act Therefore a determination by the Land Tribunal regarding the tenancies of Private Forests to which Chapter II of the Act does not apply cannot have any effect on proceedings under S. 8 of Act 26 of 1971 to decide whether an area is a private forest or not or whether the private forest has vested or not. If a finding is entered by the Land Tribunal about tenancy of private forest, it shall have no effect on the exclusive jurisdiction of the Forest Tribunal to decide whether an area is a private forest or not or whether the private-forest has vested in the State or not The Forest Tribunal has proceeded in the present case on the assumption that the finding of the Land Tribunal that the area in question was not a private forest was conclusive. That assumption is clearly untenable and the finding entered on that basis is obviously unsupportable Even assuming that such a finding may be made for the limited purpose, of the Land Reforms Act, it shall only be subject to the decision of Forest Tribunal in exercise of its exclusive jurisdiction under Ss. 8 and 13 of Act 26 of 1971.

7. In the present case there is such a reservation by the appellate authority (Land Reforms) that the decision of the Land Tribunal will be subject to the decision of the Forest Tribunal. In spite of that reservation the Forest Tribunal has

treated the decisions of the Land Tribunal as final and conclusive between the parties and operating as *res judicata* with the observation:

In this case the Land Tribunal has given a finding that the petitioners are tenants of the property before 1-4-1964 and the area is not a forest on that date with the department on the party array. Therefore, I am of the view that the above decision is a decision with jurisdiction valid until set aside which has become final and hence will operate as *res judicata*.

The result of the above finding is that the petitions O. A. 66, 67 and 70 of 1981 are allowed and it is declared that they were cultivating the areas, scheduled as on 10-5-1971 and hence entitled to the protection of S. 3(2) of the Act.

8. Evidently the Forest Tribunal in thus disposing of the case without any independent scrutiny and deciding the relevant question has committed a grave error of law. It was for the Forest Tribunal to consider the effect of the various documents and the evidence tendered for the purpose of deciding whether the land in dispute is "private forest" as defined in Act 26 of 1971 and if so whether it is held by the petitioners as owners thereof and the same is under their personal cultivation. The effect of the finding recorded by the Land Tribunal regarding the nature of the right of the petitioners should have been considered in the correct perspective without rushing to the conclusion that all the relevant questions have been finally decided by that authority and the parties are concluded by such decision. The nature of the land as on 10-5-1971 incidentally arising in these proceedings was to be considered by the Forest Tribunal. In deciding the question whether the petitioners are owners of the land as on 10-5-1971 the Forest Tribunal had to consider the claim that the petitioners are deemed tenants under S. 7D of the Land Reforms Act. In *Mathew v. Hamsa Haji*, 1987 (2) K.L.T 1 (SC) the Supreme Court has said that S. 7D gives protection only to persons whose possession had a lawful origin in the sense that they had either bonafide believed the lands to be Government lands of which they could later seek assignment or had taken the lands on lease from persons who had bona fide believed to be competent to grant such lease or had come into possession with the intention of attorning to lawful owners or on the basis of arrangements like *varam* etc. which were only in the nature of licences and fell short of a leasehold right. In *K.D. Mani v. State of Kerala*, ILR 1987 (1) Ker 570 a Division Bench of this Court has pointed out that in a case where the party based his claim mainly on the purchase certificate he had obtained from the Land Tribunal to prove his possession of the land and his cultivation the certificate issued long after the appointed date as per S. 3(1) of Act 26 of 1971 in a proceeding initiated subsequent to the vesting without the sanction of the Government in the proceedings cannot affect the right of the Government. Possession by itself creates no right to possession and enjoyment of forest land within the meaning of the term "owner" under S. 2 of the Act (*Vide State of Kerala v. Velayudhan Sivanandan*, 1966 KLT 1026). The lower authority was, therefore, bound to consider the issues in the light of the legal principles and the

evidence tendered by the parties and record its finding. Since the relevant questions had not been considered or decided, the only course open to us is to set aside the order and remand the case for disposal afresh. We do so accordingly.

M.F.A. Nos. 572, 496 and 565 of 2983. These appeals are filed by the petitioners challenging the order of dismissal of the applications. The petitioners claim right as lessees under Kunhikuttan Thampan. The parties are not examined. They relied on the testimony of PWs 4 and 5 and produced Exts. A12, A15 and A17. The genuineness of these documents have been seriously doubted. The testimony of PWs 4 and 5 cannot advance the case of the petitioners to prove any, lease arrangement It is in evidence that the land belonging to the Nilambur Kovilakom had been under the management of the Receiver appointed in a civil suit filed in 1961. The petitioners had no consistent case as to the commencement of the arrangement. They had not moved the Land Tribunal and there had been no other independent evidence to support their claim of possession. The Forest Tribunal in the absence of reliable evidence has rejected their case and dismissed the applications. We find no error warranting interference. The appeals are only to be dismissed.

In the result, M.F.A. Nos. 572, 496 and 568 of 1983 are dismissed. M.F.A. Nos. 650, 651 and 655 of 1983 are allowed, the order of the Forest Tribunal is in so far as it relates to O.A.Nos. 66, 67 and 70 of 1981 is set aside, and these cases are remitted back for disposal afresh in accordance with law in the light of the above observations. The parties shall bear their respective costs.